

**State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

ADDENDUM TO FINAL STATEMENT OF REASONS

Subject Matter:

Workers' Compensation – MEDICAL PROVIDER NETWORK

Title 8, California Code of Regulations, sections 9767.1 through 9768.15

In addition to the statements set forth in the Initial Statement of Reasons the regulations are necessary for the following g reasons:

Section 9767.3 Application for a Medical Provider Network Plan

Necessity:

Labor Code sections 4616 et seq. sets forth that medical provide networks must include certain specific requirements. It is necessary to require a MPN applicant to set forth its MPN plan in an application so that the Administrative Director may review the application to determine if the applicant's medical provider network complies with the mandates of the Labor Code, including providing adequate numbers and types of physicians, being able to treat injuries in a timely manner, and having medical treatment readily available at reasonable times to all employees.

Section 9767.6 Treatment and Change of Physicians Within MPN

Necessity:

This section is necessary to clarify the employers and insurers duties to provide medical treatment and to clarify the covered injured employees' right to receive medical treatment and select physicians within the MPN in light of the requirements of Labor Code sections 4600, 4616.3, 5401, 5402, and 5307.27.

Section 9767.10 Continuity of Care Policy

Necessity:

This section is necessary to comply with the mandates of Labor Code section 4616.2, which requires insurers or employers with MPNs to file the written continuity of care policy with the Administrative Director. It is also necessary to define and clarify certain terms used in Labor Code section 4616.2. Further, it is necessary to include a dispute resolution policy so that the parties know how to proceed if there is a dispute regarding the employee's completion of treatment.

Section 9767.11 Economic Profiling Policy

Necessity:

Economic profiling is a method of analyzing a physician's practice. For instance, an insurer might track how many physical therapy visits a primary care doctor orders on the average for patients with low back strains. The insurer then compares that rate with the rates of other doctors. Insurers may use the information to reward physicians or to eliminate physicians from their MPNs.

Labor Code section 4616.1 requires that an insurer or employer that offers a medical provider network and that uses economic profiling must file a description of the policies and procedures with the Administrative Director. It further requires the insurer or employer to provide a copy of the filing to the provider or the public upon request. The filing of the economic profiling policy allows the provider or public to review the contents. This section is necessary in order to comply with Labor Code section 4616.1.

Section 9767.12 Employee Notification.

Necessity:

It is necessary that insurers or employers who offer a MPN provide information about the MPN and its procedures so that the injured employees are able to access the appropriate medical treatment. Also, covered employees must be advised of their rights within the MPN in order to be able to enforce their rights, if necessary.

Section 9767.13 Denial of Approval of Application and Reconsideration

Necessity:

If the MPN plan is not in compliance with the regulations or Labor Code section 4616 et seq., the Administrative Director does not have authority to approve the plan. Labor Code section 4616(b). This regulation is necessary to provide a procedure for the MPN applicant to submit a new application or to request a re-evaluation if the plan was denied by the Administrative Director. It is also necessary to protect the MPN's due process right to contest the denial by providing a re-evaluation process and an appeal process.

Section 9767.14 Suspension or Revocation of Medical Provider Network Plan; Hearing

Necessity:

If a MPN is no longer operating in compliance with the regulations or Labor Code section 4616 et seq., the MPN plan's approval must be revoked. This regulations is necessary to provide a procedure to correct the deficiency, or if the deficiency is not cured, a procedure to suspend or revoke the approval of the MPN. It is also necessary to protect the MPN's due process right to contest the suspension or revocation by providing a re-evaluation process.

Section 9767.15 Compliance with Permanent MPN Regulations

Specific Purpose of Section 9767.15:

The purpose of this section is to clarify when a MPN that was approved under the emergency MPN regulations is required to comply with the new or revised sections of the permanent regulations.

Necessity:

This section is necessary because the permanent regulations impose changes from the emergency regulations concerning the access standards, the notice requirements, the requirements for contractual agreements with the providers, the continuity of care provisions, and the requirements for treating physician reports for transfer of ongoing care. Employees and approved MPNs need to know if the MPNs are required by law to conform to the permanent regulations, and if so, when.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

THE FOLLOWING NON-SUBSTANTIVE / CORRECTIONS WITHOUT REGULATORY EFFECT WERE MADE TO THE TEXT OF THE REGULATIONS AFTER THE CLOSE OF THE FINAL COMMENT PERIOD

Section 9767.8: In subdivisions (a)(3), (a)(4) and (a)(9), the word “material” was changed back to “substantive” in order to be consistent with Labor Code section 4616.2(b).

Section 9767.9(e)(1): The words “three months” in the definition of “an acute condition” were replaced with “90 days” to be consistent with the use of the words “90 days” in the definition of “a serious and chronic condition” in subdivision (e)(2).

Section 9767.10(b): The words “three months” in the definition of “acute condition ” were replaced with “ninety days” to be consistent with section 9767.9(e)(1) and (e)(2).

Section 9767.10(d)(2): The word “to” was added to the last sentence to correct the typographical error.